STATE OF MICHIGAN

COURT OF APPEALS

EYDE CONSTRUCTION COMPANY, GEORGE F. EYDE, and LOUIS J. EYDE, Petitioners-Appellants,	UNPUBLISHED November 25, 2003
v	No. 239423 Tax Tribunal
CITY OF LANSING, Respondent-Appellee.	LC No. 00-269548

Before: Sawyer, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Petitioners Eyde Construction Company, George F. Eyde, and Louis J. Eyde appeal as of right the Tax Tribunal's decision affirming respondent the City of Lansing's tax valuation of petitioners' commercial real property known as Knapp's Centre. On appeal, petitioners maintain that it was error to permit reassessing the tax valuation of Knapp's Centre under the omitted property provisions of MCL 211.34d(1)(b)(i), that the valuation was not supported by sufficient evidence, and that the method used to calculate the value of the omitted property was improper. We affirm in part and reverse and remand in part.

Appellate courts review a decision of the Tax Tribunal to determine whether it was authorized by law and based on competent, material, and substantial evidence. MCL 24.306; *Butcher v Dep't of Natural Resources*, 158 Mich App 704, 707; 405 NW2d 149 (1987). However, courts review issues of statutory and constitutional interpretation de novo as issues of law. *Birchwood Manor, Inc v Comm'r of Revenue*, __ Mich App __; __ NW2d __ (2003); *In re Hawley*, 238 Mich App 509, 511; 606 NW2d 50 (1999).

Under Const 1963, art 9, § 3 and MCL 211.27a(2), the taxable value of property cannot increase more than five percent each year until the property transfers ownership, not including adjustments for losses and additions. *WPW Acquisition Co v City of Troy*, 466 Mich 117, 121-122; 643 NW2d 564 (2002). According to MCL 211.27a(11)(a), "additions" are defined by

MCL 211.34d.[1] The definition includes omitted property, which is "previously existing tangible real property not included in the assessment." MCL 211.34d(1)(b)(i). The assessing jurisdiction has the burden of proving the property was not previously included. *Id.* There is no requirement in MCL 211.34d(1)(b)(i) that the omitted property be a separate structure.

Courts must construe an ambiguous statute in a manner that is reasonable and best accomplishes the purposes of the statute. *People v Adair*, 452 Mich 473, 479-480; 550 NW2d 505 (1996). Ambiguities in tax statutes must be interpreted in favor of taxpayers. *Int'l Business Machines v Dep't of Treasury*, 220 Mich App 83, 86; 558 NW2d 456 (1996). When a term is not defined in a statute, this Court should give the term its plain and ordinary meaning and may consult a dictionary definition. *Mahnick v Bell Co*, 256 Mich App 154, 162; 662 NW2d 830 (2003). "Tangible property" is property with "physical form and characteristics," the opposite of "intangible property," which "lacks physical existence." Black's Law Dictionary (7th ed).

Petitioners in the present case offered no evidence contradicting the testimony that the building was significantly renovated and no evidence that the renovations promised in the commercial facilities exemption certificate did not occur. Although evidence regarding the renovations is vague, the construction clearly added physically to the existing building. These physical changes constituted tangible real property. Further, respondent sufficiently established that these changes were never assessed, because the assessment remained at the 1982 level, where it was frozen under the commercial facilities exemption, MCL 207.651 *et seq.*

Petitioners argue that the building did not change significantly *after* it was placed on the assessment rolls in 1995 and, further, that respondent's assessor certified the 1995 to 1998 taxable values with full knowledge that the exemption had ended. However, the essence of omitted property is that it existed for some time yet was never valued. MCL 211.34d(1)(b)(i) does not set a time limit, nor does it state that the taxpayer must have been to blame for the past error; it requires only that the property "was not previously included in the assessment."

The Tax Tribunal therefore did not err in finding that respondent met its burden of establishing the existence of omitted property. However, we agree with petitioners that respondent's method of assessing the property was improper.

There is no provision authorizing an assessment jurisdiction to revalue an entire parcel that includes omitted property. Rather, the assessor must determine the value of the omitted property, MCL 211.34d(1)(b)(i), which is then added to the taxable value of the entire parcel, MCL 211.27a(2). The assessor cannot simply assess the entire parcel and assume the difference represents the value of the newly added property. See *Kok v Cascade Charter Twp*, 255 Mich

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[1] In *WPW Acquisition Co, supra* at 126-127, the Supreme Court held unconstitutional a specific subsection of the definition of "additions"; however, subsections consistent with the definition that existed when the five-percent cap was imposed are constitutional. This includes "increases in value caused by new construction or a physical addition of equipment or furnishings." *Id.* at 122.

App 535, 538-543; 660 NW2d 389 (2003), which addressed this issue in regard to new construction additions, MCL 211.34d(1)(b)(iii). This is because the value of the property that was not omitted was still subject to the five percent annual cap. See *Kok, supra* at 543.

Further, the statute states specifically that "the value of omitted real property is based on the value and the ratio of taxable value to true cash value the omitted real property would have had if the property had not been omitted." MCL 211.34d(1)(b)(i). For an assessing jurisdiction to accomplish this, it must assess the omitted property's value in the year that it first should have been assessed and then bring that amount forward, imposing the five percent cap for each year. This interpretation is consistent as well with the instructions set forth in 1995 State Tax Commission Bulletin No. 3.

In the present case, respondent failed to clarify whether it appraised the entire parcel or the new construction; evidence suggests the former. Further, respondent never claimed to appraise the omitted property based on its 1995 value rather than its 1999 value.

Although a petitioner has the burden of establishing true cash value of property, MCL 205.737(3); *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002), we have stated also that the tribunal cannot simply accept a respondent's assessment but "must make its own findings of fact and arrive at a legally supportable true cash value" *Jones & Laughlin Steel Corp v Warren*, 193 Mich App 348, 355; 483 NW2d 416 (1992). Similarly, a tribunal cannot accept an assessment made in violation of the requirements of MCL 211.34d(1)(b)(i).

Therefore, we remand to the Tax Tribunal for a hearing to determine the correct 1999, 2000, and 2001 assessments, calculated by determining the renovations' 1995 value, adding that value to the 1995 assessed value, and bringing the assessment forward to 1999.

Affirmed in part and reversed and remanded in part. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray